

IN THE JUSTICE OF THE PEACE COURT
OF THE STATE OF DELAWARE

ORDER AMENDING JUSTICE OF THE PEACE COURT
CIVIL RULE 69(g)

ORDER

This 4th day of May, 2010, it appears to the Court that it is desirable to amend Justice of the Peace Court Civil Rule 69(g) to provide for the Court and the public additional uniformity and clarity pertaining to the execution of garagekeepers' liens.

NOW, THEREFORE, IT IS ORDERED THAT, the following amendment shall be effective June 1, 2010:

- (1) Amend Justice of the Peace Court Civil Rule 69(g) by eliminating the subsection as it currently reads and inserting in lieu thereof the following:

“(g) Garagekeepers’ liens.

(1) Persons entitled to liens pursuant to 25 *Del. C.* Ch. 39 may apply to the Court for a judgment and permission to conduct a garagekeeper’s sale in accordance with the forms prescribed by the Court. In addition to the application requirements of 25 *Del. C.* 3903(b), the application shall include a copy of the garagekeeper’s Form 50, when he/she is filing as an artificial entity, and the following documents related to the property which is the subject of the sale application:

- (a) any work order(s), including tow slip(s) and repair invoice(s);
- (b) any demand letter(s) made to the registered owner and any other lienholder of the property, including the letter(s) indicating that the garagekeeper has possession of the property;
- (c) an affidavit or other proof of mailing of the demand letter(s);
- (d) a lien certificate obtained from Delaware Division of Motor Vehicles, dated no more than 120 days prior to filing with the Court, for each vehicle exhibiting a Delaware tag or no tag;
- (e) a lien certificate or statement of ownership from the Division of Motor Vehicles from the corresponding state, dated no more than 120 days prior to filing with the Court, for each vehicle from a state other than Delaware;

- (f) if the property is not a motor vehicle, documentation on ownership, title and lien from the appropriate regulatory agency; and
 - (g) a report from the Delaware State Police Auto Theft Unit, dated no more than 120 days prior to filing with the Court, if the property is a motor vehicle.
- (2) The contents of the notice(s) of the garagekeeper's lien sale mailed to the registered owner and any other lienholder of the property is prescribed by 25 *Del. C.* § 3903(c) and shall consist of copies of the application to conduct a lien sale, the garagekeeper's notice of sale, and the answer to garagekeeper's claim.
- (3) If the claim is contested, the Court shall determine the amount of indebtedness and the right to sale by the garagekeeper.
- (4) If a claim for storing or safekeeping any motor vehicle towed at the request of a party other than the owner is contested by the title holder of record or by another lienholder whose lien the Court finds to be valid, the garagekeeper shall be required to prove that the notice requirements of 25 *Del. C.* § 3907(b) were met. If the garagekeeper fails to so prove, the garagekeeper may be permitted to sell the vehicle, but shall be required to return all proceeds of the sale to the Court for distribution in accordance with the priority determined by the Court.
- (5) If the notice to the registered owner, or any other lienholder of the property, which is not a motor vehicle, is returned to the Court marked as "Unclaimed" or "Refused" by the post office, the Court shall re-send the notice by 1st class mail with certificate of mailing. If the garagekeeper sends said additional notice, the garagekeeper shall provide to the Court an affidavit or other proof of such mailing.
- (6) If the notice to the registered owner, or any other lienholder of the property is returned to the Court with notification from the post office that the notice is undeliverable, and the garagekeeper cannot subsequently locate the party, the garagekeeper shall file an additional affidavit with the Court outlining the subsequent steps taken to secure a good address that have been unsuccessful.
- (7) If the sale date must be changed from the original sale date listed in the notice(s) to the registered owner and any other lienholder of the property, the interested party or parties shall be re-noticed of the new sale date. This notice shall consist of the application

to conduct a lien sale reflecting the new sale date, the garagekeeper's notice of sale reflecting the new sale date, and the answer to garagekeeper's claim.

- (8) In order to obtain the authorization to conduct a lien sale, the garagekeeper, upon completion of the notice of sale requirements of 25 *Del. C.* § 39059(a), shall file a copy of the handbill, along with a notarized list of the posting locations and the original newspaper advertisement with the affidavit from the newspaper referencing the advertisement, with the Court at least 5 days prior to the sale date.
- (9) If the claim is not contested or if the garagekeeper is otherwise found to have a right to sale (other than as permitted under subsection (g)(3) of this Rule,) the proceeds of the sale shall be applied to discharge of the garagekeeper's lien and the cost of keeping and selling the property. The balance, if any, of the proceeds of the sale shall be deposited not later than 10 days from the date of the sale with the Court to be applied by the Court to the payment of any lien or security interest to which the property may be subject in the order of their priority, with any remaining proceeds to be paid to the owner or owners of the property sold, but in case such owner or owners cannot be found, such balance shall be turned over to the State Treasurer not later than 60 days from the date of the sale."

FOR THE COURT:


Chief Magistrate